

Draft: December 5, 2000

SAMPLE  
**LICENSE AGREEMENT**  
FOR TELECOMMUNICATIONS FACILITIES PASSING THROUGH  
THE CITY OF FAIRFAX

**THIS LICENSE AGREEMENT** ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_, by \_\_\_\_\_, a Virginia corporation ("Licensee"), and **THE CITY OF FAIRFAX, VIRGINIA**, a Virginia municipal corporation (the "City").

**RECITALS**

**WHEREAS**, Licensee is a certificated provider of telecommunications service in the Commonwealth of Virginia; and

**WHEREAS** Licensee desires to use the City's Public Ways to construct, operate, maintain, repair, and upgrade its Telecommunications Facilities; and

**WHEREAS** Licensee in addition to the consideration hereinafter provided, agrees to give certain assurances and guarantees to the City in exchange for receiving permission from the City to construct and install its telecommunications facilities within the City's Public Ways; and

**WHEREAS**, The City agrees to permit Licensee to use the City's Public Ways pursuant to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the covenants, assurances, indemnities and guarantees of Licensee and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**1. Recitals.**

The recitals hereto are incorporated herein by this reference

**2. Installation of Equipment**

All Equipment erected by the Licensee shall be neat and symmetrical, and shall be so located as in no way to interfere with the safety or convenience of persons traveling on or over the said streets, alleys, highways and other public places. Installation of Equipment shall be in accordance

with the plans entitled \_\_\_\_\_, as prepared by \_\_\_\_\_ and dated \_\_\_\_\_, and any revisions thereto. Such revisions, as made by Licensee or requested by the City, shall be approved by the City before installation is begun. Copies of such revisions shall be provided to the City and be in accordance with the conditions and restrictions in this License. In the installation and maintenance of its Equipment, the Licensee shall not open or encumber more of any street, alley, highway or other public place than will be necessary to enable it to perform the work with proper economy and efficiency. The installation of Equipment under the provisions of this License shall be subject to the supervision of the City Manager or his designee and the Licensee shall replace and properly reconstruct any sidewalk and street pavement and repair any other property owned by the City, including trees and landscaping, which may have been or may be displaced or damaged by the Licensee in the construction and maintenance of its system. Licensee shall bear the expense for any City permits required for installation and maintenance of the Equipment.

### **3. Protection of Facilities of City and Others**

The Licensee and its agents shall take all prudent action to avoid damage or injury to pipes, cables, fixtures or installations of the City and of other utility services, particularly those installations whose disruption can cause hazards or danger to persons or property. In the event such damage or injury occurs, the Licensee shall immediately notify the appropriate public safety department and shall cooperate and contribute its capabilities promptly and to the extent necessary to remove any hazards and repair any damage. Licensee shall provide for a local, Virginia-licensed contractor to be on-call to respond within 30 minutes to any incident where City water or sanitary sewer lines or services are damaged or injured. Such contractor shall be a reputable water and sanitary sewer contractor. Licensee shall provide test pits at all utility crossings and keep such test pits open until that section of the boring operation is complete. The minimum separation between City water and sanitary sewer facilities and Licensee's Equipment shall be one (1) foot vertical and five (5) feet horizontal.

### **4. Removal and Relocation**

In the event the City determines it to be necessary, the City may require the Licensee to remove or relocate any Equipment on public property to other public property. The Licensee shall not be entitled to payment from the City for any portion of the cost it incurs hereunder whether such costs are incurred directly or indirectly. The Licensee shall bear all expense of such removal or relocation provided the City will issue, without charge to the Licensee, whatever City permits are required for relocation of the Licensee's Equipment. The Licensee shall use its best efforts to remove or relocate said Equipment within ninety (90) days of notification unless the City Manager, for good

cause, extends such time.

**5. Compensation**

The Licensee shall pay to the City for the usage of the public right-of-way for telecommunications facilities the following amounts:

First Year	\$ _____
Second Year	\$ _____
Third Year	\$ _____
Fourth Year	\$ _____
Fifth Year	\$ _____

The annual fee shall be due to the City within 45 days after the effective date of this License, and upon each anniversary of that date. Notwithstanding the aforesaid, if any one or more payments are prohibited or limited by law at the time for payment, the parties shall renegotiate the terms of this License at such time.

**6. Indemnification**

The Licensee shall maintain all of its Equipment in good and safe order and condition; and shall at all times fully indemnify, protect and save harmless the City, its elected officials, officers, employees, and agents from and against any and all costs, charges and claims arising from any act or omission of the Licensee, including, but not limited to, attorneys fees, during the term of this License.

**7. Insurance**

Licensee shall at all times during the term of this License maintain general liability insurance, including bodily injury, personal injury and property damage coverage, in the amount of two million dollars (\$2,000,000) with the City of Fairfax, its elected officials, officers, employees and agents, named as additional insureds. Licensee shall require, at all times, that all general contractors, contractors, subcontractors or consultants performing work under this License, maintain general liability, automobile liability, workers compensation and employer's liability insurance coverage, in the following amounts: general liability insurance coverage in the amount of two million dollars (\$2,000,000) per occurrence, automobile liability coverage in the amount of two million dollars (\$2,000,000), worker's compensation and employer's liability insurance coverage in the statutory amounts with the City of Fairfax, its elected officials, officers, employees and agents named as

additional insureds on such policies. Licensee shall deliver to the City, for review and approval before any work is begun, certificates of insurance, in a form acceptable to the City, demonstrating that the insurance coverage required by this paragraph is in full force and effect. Such certificates shall indicate that the insurance company shall give to the City thirty (30) days prior written notice of expiration, cancellation, renewal or change in coverage. Thirty (30) days prior to the expiration, cancellation or renewal of any such insurance policy, Licensee shall provide the City with written evidence acceptable to the City, that the required insurance coverage is effective, will be continuing during the course of the work, and that the insurance premiums are paid. Licensee shall have the affirmative obligation, independent of the general contractor, subcontractors and insurance companies, to keep itself and the City informed of all expirations, renewals, cancellations and changes in insurance coverage for insurance required under this paragraph, including the insurance coverage required of the general contractors, contractors, subcontractors and consultants. Licensee shall immediately notify the City of any expirations, renewals, cancellations or changes in such insurance coverage. If the City is required to pay any claim made under the applicable insurance policies, Licensee agrees to indemnify, pay and reimburse the City for all such claims, including all deductibles, and costs (including attorney's fees).

#### **8. Emergency Contacts Required**

Licensee shall continuously provide the City with an accurate and complete list of emergency telephone numbers of representatives of Licensee and any contractors, subcontractors, consultants or others responsible for the installation, operation and maintenance of the Equipment. Such list shall provide for 24-hours-a-day, 7-days-a-week contact, and Licensee shall immediately notify the City of any changes to the list.

#### **9. Removal Upon Termination**

Upon the expiration of the term of this License or upon earlier termination by surrender, forfeiture or otherwise, all facilities of the Licensee in the City shall remain the property of the Licensee and, at the option of the City, shall be removed from the streets, alleys and public places of the City at the expense of the Licensee within a reasonable time after expiration or termination. The Licensee shall be liable for any damage to the City property or personal injury resulting from said removal.

#### **10.. Governing Law**

The rights and privileges granted herein to use public property are expressly subject to the conditions, limitations and provisions contained in the general ordinances of the City, now in force

or that may be hereafter passed by the City Council, relative to the use of the streets, alleys and public places of the City, so far as they may be applicable to the rights and privileges herein granted, provided such ordinances that may be passed will not place unreasonable or impractical burden upon the Licensee.

At all times during the term of this License, Licensee, its employees, agents and contractors, shall comply with all federal, state and local, statutes, laws, ordinances, regulations and administrative orders. Nothing herein shall be construed to relieve Licensee, its employees, agents and contractors from their obligations to comply with such laws. Neither shall any provision herein be construed to release Licensee, its employees, agents and contractors from obtaining all required permits for installation or maintenance of Equipment.

**11. Non-Exclusivity**

Nothing in this License shall be construed to grant unto the Licensee any exclusive right or to prevent a grant of similar privileges to other Licensees.

**12. Bond**

Prior to installation of Equipment, Licensee shall submit to the City a bond in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_) to ensure faithful compliance with the conditions of this License, such bond shall be in a form acceptable to the City, meeting the requirements of Section 2-48, et seq., of the Code of the City of Fairfax, Virginia, and shall remain in effect throughout the term of this License. The amount of said bond shall be subject to reasonable increases by the City upon thirty (30) days prior written notice to Licensee, if the City determines that a higher bond amount is needed to ensure compliance with the terms and conditions of this License.

**13. Notices**

Unless otherwise stated herein, all notices which shall or may be required or given pursuant to this License shall be in writing and delivered personally or transmitted: (i) through the United States mail; (ii) by means of prepaid overnight delivery services; or (iii) by facsimile transmission, if a hard copy of same is followed by delivery through the United States mail or by prepaid overnight delivery service as just described, effective upon verification of receipt, as follows:

to the City:	City Manager City of Fairfax 10455 Armstrong Street
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Fairfax, VA 22030

to Licensee:

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Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail or the next day in the case of overnight delivery. Either party may, from time to time, designate any other person or address for this purpose by written notice to the other party in the manner set forth above.

**14. Severability**

The sections, paragraphs, sentences, clauses and phrases contained in this License are severable, and if any phrase, clause, sentence, paragraph or section of this License shall be declared unconstitutional or otherwise invalid by a valid judgement or decree of a court of competent jurisdiction, such constitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this License.

**15. Entire Agreement**

The City and Licensee agreed that this License describes the entire agreement and understanding between the parties and that no written or verbal statements or representations have been made which either modify, add to or change this License.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be signed by its proper officers this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
**a Virginia corporation**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESS/ATTEST:

\_\_\_\_\_

**CITY OF FAIRFAX, VIRGINIA,**  
**a Virginia municipal corporation**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

COMMONWEALTH OF VIRGINIA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_ day of \_\_\_\_\_, 200\_\_, by  
\_\_\_\_\_, as \_\_\_\_\_, on behalf  
of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA  
CITY OF FAIRFAX

The foregoing instrument was acknowledged before me this \_\_ day of \_\_\_\_\_, 200\_\_, by  
\_\_\_\_\_, as \_\_\_\_\_, on behalf  
of the City of Fairfax, Virginia.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_